

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE: . Case No. 14-11179-reg  
. Chapter 15  
SIFCO, S.A., .  
Debtor. . One Bowling Green  
. New York, New York 10004  
. May 6, 2014  
. 9:55 a.m.  
. . . . .

TRANSCRIPT OF HEARING ON REQUEST FOR PRELIMINARY INJUNCTIONS  
BEFORE THE HONORABLE ROBERT E. GERBER  
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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1 (Time Noted: 9:55 a.m.)

2 THE COURT: SIFCO. PI continuing the TRO that I  
3 had previously issued.

4 I know some of you. I don't know if I know  
5 everybody. Is it Mr. Heuer?

6 MR. HEUER: Yes, Your Honor.

7 THE COURT: Okay. And others? Mr. Heuer, let the  
8 others come over to the microphone to introduce themselves.

9 MR. FOURNIER: Good morning, Your Honor, for the  
10 record, David Fournier on behalf of the Ad Hoc Committee of  
11 Bond Holders.

12 THE COURT: Okay, thank you, Mr. Fournier.

13 MR. PITTA: Good morning, Your Honor, Thomas Pitta  
14 of Emmet, Marvin & Martin on behalf of --

15 THE COURT: I couldn't hear your last name.

16 MR. PITTA: Pitta, P-I-T-T-A. On behalf of --

17 THE COURT: P-I-T-T-A?

18 MR. PITTA: Yes.

19 THE COURT: Thank you, Mr. Pitta. And who do you  
20 represent?

21 MR. PITTA: Bank of New York Mellon, Your Honor.

22 THE COURT: Mellon, okay.

23 MR. JEWELL: Ronald Jewell, also on behalf of the  
24 Ad Hoc Committee.

25 THE COURT: Okay, so you're with Mr. Fournier?



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1 MR. JEWELL: I am with Mr. Fournier.

2 THE COURT: Fournier, excuse me. I've known Mr.  
3 Fournier for a while, back in -- are you still working out of  
4 Delaware, Mr. Fournier?

5 MR. FOURNIER: Your Honor, I am, and this is the  
6 first time I've had the pleasure of appearing in Court before  
7 Your Honor.

8 THE COURT: Okay, thank you. I'm sorry. Okay,  
9 gentlemen, my understanding is that I have reservations of  
10 rights on this, but nothing else, and that the folks on the  
11 responding side understandably had concerns about me doing  
12 here anything other than protecting the status quo for a  
13 while.

14 So, under my case management orders under opposed  
15 statements of fact in the motion papers are taken as true.

16 My understanding of the original purpose for which  
17 I entered the TRO was to preserve the status quo and to  
18 protect the Estate against asset grabbing, but was also to  
19 engage in a stop, look, and listen before any assets in the  
20 U.S. would be moved, or most obviously, shelled out to  
21 anybody.

22 I'll give each of you a chance to be heard, but  
23 it's my tentative, subject to your respective rights to be  
24 heard, to grant the preliminary injunction, continue to  
25 protect the status quo, but to do nothing further in the



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1 case, and to continue the restraints on moving any assets in  
2 the U.S. until people have had a chance to be heard either  
3 here or in Brazil.

4 Let me hear first from you, Mr. Heuer.

5 MR. HEUER: Thank you, Your Honor. Your Honor is  
6 correct in the assessment that we're here seeking a status  
7 quo preliminary injunction, as we were on the TRO.

8 No assets are being moved to or from the United  
9 States. We're simply seeking to preserve the status quo.

10 There are no business operations here in the  
11 United States, Your Honor, so there's nothing to protect as  
12 far as a manufacturing plant or anything of that sort. It  
13 really is simply a status quo for the protection of several  
14 assets.

15 Your Honor, after I had gotten the TRO entered by  
16 the Court last week, on revised terms per Your Honor's order,  
17 I had contact with counsel to the bond holders. We had  
18 discussion about the terms of the proposed preliminary  
19 injunction order, counsel provided me with comments, I  
20 reviewed those comments, --

21 THE COURT: Is that Mr. Fournier or one of his  
22 guys, or somebody different?

23 MR. HEUER: Mr. Fournier, Your Honor. With a  
24 minor revision that was agreed upon among the parties, we  
25 came to the terms of an agreed order. I filed that order



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1 with the Court on Friday, provided copies to counsel before  
2 the hearing this morning, and I do have a copy to hand up to  
3 Your Honor, if you'd like, on disk, as well, or we could  
4 email it to Chambers later, Your Honor.

5 THE COURT: Okay. To what extent is the order you  
6 want me to sign today substantively different, other than, of  
7 course, its duration, from the one that I originally signed?

8 MR. HEUER: It is substantively different in that  
9 it requires express notice to all known bond holders. It  
10 also requires -- explicitly requires advance notice before  
11 the foreign representative were to seek any relief with  
12 respect to assets.

13 THE COURT: And, as a matter of mechanics, you  
14 said to all bond holders. Was that to Mr. Fournier as a  
15 representative of them, or does he only represent a sub-set  
16 of them and the deal was that they would all be notified?

17 MR. HEUER: My understanding is that Mr. Fournier  
18 represents a sub-set. I'm not quite sure of the exact scope  
19 of that sub-set. It's my understanding it's roughly a third  
20 of the bond holders. I don't know their individual  
21 identities.

22 So we would be providing notice to all known bond  
23 holders. We don't know all. But to those, to the extent  
24 that we have information, we will provide to the bond holders  
25 directly.



1 THE COURT: Uh-huh.

2 MR. HEUER: To the extent we do not, we're also  
3 providing notice to the indentured trustee.

4 THE COURT: Do you have the usual problem on the  
5 absent bond holders that their bonds may be in a depository  
6 trust company, something similar to that, or in street name  
7 or nominee name?

8 MR. HEUER: Could well be, Your Honor. We don't  
9 have much information on some.

10 THE COURT: All right, so you'll do just the best  
11 you can.

12 MR. HEUER: Correct, Your Honor.

13 THE COURT: Okay. Mr. Fournier, can I invite you  
14 to comment, if you'd like to?

15 MR. FOURNIER: Thank you, Your Honor. A couple of  
16 things.

17 First, with respect to the bond holders that we  
18 represent, and we did note this in our reservation of rights,  
19 we represent approximately 31 percent, and the identity of  
20 those holders is listed in the reservation of rights.

21 Your Honor, we did provide comments to the  
22 proposed form of order, and those were incorporated in the  
23 order is that is before the Court today. So we don't oppose  
24 the entry of the preliminary injunction order today.

25 THE COURT: Pause, please, Mr. Fournier. Can you



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1 pull the microphone closer to you, please?

2 MR. FOURNIER: Sure. So, Your Honor, we don't  
3 oppose the entry of a preliminary injunction order today.

4 We filed a reservation because we wanted the Court  
5 to be aware of concerns that we had with respect to this  
6 Debtor and pre-Petition transfers of substantial value to the  
7 Debtor's parent company in Brazil that may well, almost  
8 certainly will, be an issue for the final recognition  
9 hearing.

10 We didn't want, Your Honor, to simply give the  
11 Court comments on an agreed form of preliminary injunction  
12 and not give the Court a head's up that there was what we  
13 believed to be a very significant issue out there that  
14 ultimately will bear on final recognition.

15 Your Honor, the order is being entered today, as  
16 we understand it, to simply maintaining the status quo. The  
17 foreign representative is not able to access the funds on  
18 deposit with Bank of New York, which we understand from  
19 counsel to the foreign representative are really the only  
20 assets that are in the United States.

21 THE COURT: I hear you. Do you know yet, Mr.  
22 Fournier, whether Brazil has avoidance actions laws similar  
23 to those we have in the U.S.?

24 MR. FOURNIER: Your Honor, we're still looking at  
25 that. I don't know standing here.





1 THE COURT: Because you've been around the block a  
2 couple of times, I think you know what's causing me concern,  
3 which is that the rights of the foreign rep in a Chapter 15  
4 case, even after recognition, don't include the U.S. Chapter  
5 5 actions.

6 And if there is an inappropriate transfer, it  
7 would be unfortunate if it were forfeited merely because of  
8 constraints of that character. Obviously, I'm expressing no  
9 view as to whether there was a transfer, or if it was in any  
10 way inappropriate.

11 But, I always understood that you need an actual  
12 case under one of the other Chapters of the Code in the U.S.  
13 if you want to invoke Chapter 5.

14 MR. FOURNIER: Agreed, Your Honor. I think  
15 Chapter 5 pretty clearly does exclude avoidance actions from  
16 its scope. It does contemplate the plenary proceeding could  
17 be commenced once there is final recognition and avoidance  
18 actions pursued there.

19 Our concern with that here, Your Honor, and not to  
20 argue the merits standing here today, our concern with that,  
21 though, would simply be that the foreign representative here  
22 is not a trustee or an administrator or the like that you  
23 would often see with a proceeding, say, out of England. The  
24 foreign representative is actually an officer appointed by  
25 the board of the debtor-in-possession in Brazil, so it's an



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1 entity --

2 THE COURT: Well, debtors-in-possession, or the  
3 equivalent under foreign law, is still allowed to bring 15s,  
4 but then it raises the usual issue of -- if you have a  
5 proceeding under -- or a case under another Chapter of the  
6 Code in the U.S., what we call in the Second Circuit "STN  
7 authority," or something like that, to deputize somebody else  
8 to bring any claims on behalf of the Estate that need to be  
9 brought.

10 But, your point, if I heard you right, is simply  
11 we're protecting the status quo now, and those issues will be  
12 sorted out down the road.

13 MR. FOURNIER: That's exactly right, Your Honor.

14 THE COURT: Okay, fair enough. Anybody else want  
15 to be heard today? Mr. Pitta?

16 MR. PITTA: Yes, Your Honor. Your Honor, just  
17 briefly. The Bank of New York Mellon is the indenture  
18 trustee for these bonds.

19 We have been in communication with the ad hoc  
20 holders and working with them through this process. The  
21 funds are in our account, and our concern was that -- as  
22 shared with them, that those funds stay there. We're  
23 comfortable with the proposed order that the foreign  
24 representative has proposed at this point.

25 THE COURT: Mr. Pitta, I'm always comfortable when



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1 I have an indenture trustee that shows up.

2 To what extent can I have confidence that your  
3 appearing in the case will give me the comfort I need that  
4 unrepresented bond holders will be looked out for by you?

5 MR. PITTA: Well, Your Honor, we have already  
6 provided a notice to all holders of the filing of the case.  
7 As I said, we're working actively with the ad hoc holders, we  
8 are aware of the existence of the pre-Petition transactions  
9 that are of concern, and we've done some preliminary looking  
10 at those ourselves.

11 And we will be active in this case and make sure  
12 that the unrepresented -- or the bond holders not represented  
13 by Mr. Fournier's group will have their voice here.

14 THE COURT: Okay, good enough. Anybody else want  
15 to be heard?

16 Okay, then the preliminary injunction is granted.  
17 The Legislative history of this is that it's to protect the  
18 status quo with a full reservation of rights on the part of  
19 everybody, vis-à-vis everything. If there's a broader way to  
20 say it, I would even do that.

21 Did I hear you say, Mr. Heuer, that you would run  
22 the proposed preliminary injunction past Mr. Fournier?

23 MR. HEUER: Yes, Your Honor.

24 THE COURT: And also Mr. Pitta?

25 MR. HEUER: I'm not certain whether they --



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1 MR. PITTA: Your Honor, I have seen it, and the  
2 Bank of New York is comfortable with it.

3 THE COURT: Okay, good enough. All right, then,  
4 does my Chambers already have the revised form?

5 MR. HEUER: It was filed. I'm not sure whether it  
6 was sent separately as an email file for entry. If Your  
7 Honor would like, --

8 THE COURT: Well, filed would -- I'm not sure what  
9 that would mean in this context, Mr. Heuer, because it can't  
10 be filed until I sign it. Do you mean it was like lodged as  
11 a proposed order, like in California they call it "notice of  
12 lodging," or something like that?

13 MR. HEUER: Yes, we filed a notice of proposed  
14 order, Your Honor.

15 THE COURT: Okay, good. All right, assuming there  
16 are no curve balls in it, I'll sign it in the form in which  
17 it was vetted by all of your folks.

18 MR. HEUER: Thank you, Your Honor.

19 THE COURT: Okay, thank you very much. Have a  
20 good day.

21 (Time noted: 10:07 a.m.)

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CERTIFICATE

I, Randel Raison, certify that the foregoing is a  
correct transcript from the official electronic sound  
recording of the proceedings in the above-entitled matter, to  
the best of my ability.

*Randel Raison*

5/14/14

Randel Raison



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